EXHIBIT E

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343(JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Friday, March 16, 2007, beginning at approximately 3:00 p.m., there being present:

BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
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for Plaintiffs

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APPEARANCES (Continued):

that response for just a moment.

I don't expect, and certainly, in none of your papers, No. 1, you are not asking me to do anything with respect to those applications and with respect to those hearings, and I expect the reason for that is I don't have -- and tell me whether you agree with this -- I don't have the authority to direct Tatung to stand down; do you agree with that?

MR. CONNOR: Not necessarily, Your Honor.

SPECIAL MASTER POPPITI: Tell me why you don't think.

MR. CONNOR: Well, we believe that these motions could have, and Mr. Merideth raised this on Monday, we did discuss it, and, at the time, LPL didn't see how what it understood to be Tatung's plan could be heard before Your Honor, but as it's now taken shape, these issues could be raised with Your Honor if they are going to be raised.

And what we are asking for is that Your Honor issue an order on one hand that extends the time by which LPL can complete its third-party discovery, and we would submit that a reasonable time would be 60 days, and then we also ask Your Honor to direct Tatung to stop

interfering and throwing up road blocks in front of LPL's

motion that we had presented to Your Honor which is to sustain our objections and to grant us a protective order with regard to the production of confidential information concerning unaccused products. And there is -- there is absolutely nothing improper about what we have done.

It's exceedingly important to our client, as we have said on numerous occasions, that information about unaccused products not be shared with our competitor. There is absolutely no reason to do that. That very issue is under consideration by Your Honor. We would have been happy and we asked that the issue be presented to you in some form that would have precluded having to do this. We don't enjoy going to 13 different jurisdictions and filing these motions.

Second, we have asked for emergency consideration of these motions because we want to get the decisions made right away. So, if a decision is that the information should be produced, then it can be produced

by these third-party witnesses. And we have -- that effort to try to expedite a determination of the issue has been resisted by LG Phillips.

So, to suggest somehow or another that we are trying to impede the process is just flat out wrong. And it's -- well, that's the end of it. I won't --

SPECIAL MASTER POPPITI: Let me do this before Mr. Christenson says anything: I hope, if nothing else, over the time that we have -- that I have had an

opportunity to be working with all of you, I hope one of the things that you have learned is, when I say I have not made a judgment one way or the other, when I do not have any inclination one way or the other, that you can take me at my word.

So, the dialogue that I was having earlier about the papers that have been put before me and what, if any, authority I have, notwithstanding the language that I used for purposes of having that dialogue, because I think the language is the language of the art to use, the language of the law to use, I make no judgment and I have no inclination.

Let me say this as well, and perhaps I should have done this earlier than now: To the extent

that it is appropriate for a Special Master and for somebody sitting in my chair to give an inclination as to what a finding and recommendation is going to be, and particularly to give an inclination as to a finding and recommendation that has not only implications in this case but perhaps implications in other cases, even though I know what I do is merely a finding and recommendation, it's not adopted by the Court, it is -- the words are, they are on the paper, hopefully, they have some worth, but it's the Court's words that count.

But to the extent that it's important to give an inclination on the issue of accused/unaccused, I think the best way to describe that is you know that I have not filed a finding and recommendation on that issue, and you also know that discovery is proceeding --

I am not going to characterize how it's proceeding -- on accused product. You all know that.

You can expect, and I said it to you last week, but, quite frankly, I wasn't able to turn to it and get to it this week, you will get a finding and recommendation. It's important that it be as careful -- they all should be careful -- but in more depth in terms of its analysis of dealing with the issue of accused/unaccused. But by virtue of what has been going

on, I am telling you that the discovery is going to be, absent something earth shattering that I consider in the next number of days, it's going to be limited to accused products.

Now, perhaps I should have done that earlier, and I will even go so far as to suggest, by perhaps doing it earlier in terms of giving you an indication or an inclination on the record, you would have been able to, perhaps, discussed the issue in a meet and confer more meaningfully and you would have had the opportunity and you now may have that opportunity to share a Special Master's inclination with other jurisdictions that you will be working in.

Now, having said that, Mr. Christenson.

MR. CHRISTENSON: Yes, Your Honor. Thank you. I don't know if there is anything else that you would like me to address concerning the third-party issue. I think -- I think we all understand your view on that and it sounds like that's an issue to be addressed

EXHIBIT F

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TATUNG COMPANY and
TATUNG COMPANY OF AMERICA, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

L.G. PHILIPS LCD CO., LTD.,

Plaintiff,

vs.

TATUNG COMPANY, TATUNG COMPANY OF AMERICA, INC., and VIEWSONIC CORPORATION,

Defendants.

[C.A. No. 04-343-JJF
United States District Court
District of Delaware]

CASE NO. CV07-1614 DDP(AJWx)

DEFENDANTS TATUNG COMPANY AND TATUNG COMPANY OF AMERICA, INC.'S *EX PARTE* APPLICATION FOR PROTECTIVE ORDER LIMITING SCOPE OF SUBPOENA SERVED ON THIRD PARTY INGRAM MICRO, INC. PURSUANT TO FRCP 26(C)

[[Proposed] Order Filed Concurrently Herewith]

Judge:
Courtroom:

PLEASE TAKE NOTICE that Defendants TATUNG COMPANY and TATUNG COMPANY OF AMERICA, INC. (the "Tatung Defendants") hereby submit this *ex parte* application ("Application") for a Protective Order limiting the scope of third party discovery served by Plaintiff L.G. Philips LCD Co., Ltd. ("LPL") on INGRAM MICRO, INC. ("Ingram"). The Tatung Defendants submit this Application for a

Protective Order pursuant to Federal Rule of Civil Procedure 26(c) and Civil L.R. 7-19.

This Application concerns a subpoena for testimony and documents issued out of this district in connection with a patent infringement lawsuit pending in the United States District Court for the District of Delaware (the "Delaware Action"), C.A. No. 04-343-JJF. The discovery deadline in the Delaware Action is set for March 30, 2007. This matter is brought on an *ex parte* basis due to the urgency and immediacy of the relief requested.

- On February 13, 2007, Plaintiff LPL served Ingram with a deposition and document subpoena. LPL has since served 22 other third parties who are, like Ingram, the Tatung Defendants' customers.
- Given the press of discovery deadlines and motion practice before the Special Master in the Delaware Action, on February 27, 2007, counsel for the Tatung Defendants requested a meet and confer, pursuant to FRCP 26(c), regarding the scope of the subpoenas. *See* Exhibit 1.
- Counsel for LPL responded that it could not meet and confer prior to March 5, 2007. *See* Exhibit 2.
- On March 5, 2007, the parties met and conferred. Counsel for LPL refused to limit the scope of third party discovery.

LPL's subpoena to Ingram requested documents by March 5, 2007. The deposition is noticed for March 13, 2007.

Given the urgency of this situation and LPL's unwillingness to narrow the scope of its extremely broad subpoenas, the Tatung Defendants must file this motion on an *ex parte* basis and are unable to comply with Local Rules 45-1, 37-2, or 6-1. *See* Declaration of Charlene L. Oh ("Oh Decl."), ¶ at 4, filed concurrently herewith.

This Application is made on the grounds that LPL's subpoenas to two dozen customers, issued out of fifteen different judicial districts across the country, seek to obtain extremely broad categories of confidential, commercially sensitive information relating to the Tatung Defendants' business relationships with their customers and make

absolutely no attempt to limit the information sought to the accused products at issue.

Because the deposition of Ingram is fast approaching, the Tatung Defendants respectfully request that this Court issue a Protective Order pursuant to FRCP 26(c) limiting the scope of any testimony and documents from Ingram to information relating to the accused products. *See* Oh Decl. at ¶ 5.

This Application is based upon the Memorandum of Points and Authorities, the the Declarations of Charlene L. Oh and Jackson Chang, the pleadings and files in this action, and such other argument and evidence as may be presented at the hearing.

DATED: March 9, 2007

GREENBERG TRAURIG, LLP

By: _____
FRANK E. MERIDETH
MARK KRIETZMAN
VALERIE W. HO
CHARLENE L. OH

Attorneys for Defendants
TATUNG COMPANY AND TATUNG COMPANY OF AMERICA, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Tatung Defendants submit this Memorandum of Points and Authorities in support of their Motion for Protective Order Limiting Scope of Third Party Subpoena (the "Motion for Protective Order"). The subpoena at issue is attached as Exhibit 3 hereto and made a part hereof. For the reasons discussed in greater detail below, the Tatung Defendants' request for a protective order should be granted because the discovery sought by Plaintiff L.G. Philips LCD Co., Ltd. ("LPL") is:

1. A transparent and improper effort by LPL to perform an "end run" around a potentially unfavorable ruling by the Special Master in the Delaware Action concerning the proper scope of LPL's discovery;

2. Irrelevant in that it seeks extremely broad categories of communications and information from the Tatung Defendants' customers entirely unrelated to the patents-in-suit or the accused products in the Delaware Action;

3. Not reasonably calculated to lead to the discovery of admissible evidence in the Delaware Action, but instead, seeks information about the Tatung Defendants' confidential business communications and trade secret information; and

4. Unduly burdensome and calculated to harass the subpoenaed third parties, some of whom have already responded to subpoenas issued by LPL during jurisdictional discovery.

II. STATEMENT OF FACTS

A. The Nature Of This Lawsuit.

Defendant Tatung sells electronic products including computer monitors and televisions to resellers and retailers worldwide. Defendant Tatung Company of America, a California corporation, is a reseller of computer monitors and other LCD applications in the United States. LPL competes with the Tatung Defendants in the market of flat display panel products.

Third-party Ingram, the recipient of LPL's subpoena and deposition notice, is

located in Santa Ana, California and is a customer of the Tatung Defendants.

The Tatung Defendants, who integrate more than 800 models of visual display products, are Original Equipment Manufacturers ("OEMs"). As such, many of their products are branded and otherwise customer specific; in most instances, the products are made to exacting customer specifications. Because the monitor business is highly competitive, the particular product design requirements and specifications of the Tatung Defendants' OEM customers, including those of Ingram, are extremely valuable trade secrets. The Tatung Defendants' specific pricing arrangements with customers also are extremely valuable trade secrets.

In the Delaware Action, LPL has alleged patent infringement claims against the Tatung Defendants based on certain "rear-mount" patents with respect to 20 of its products.

B. The Tatung Defendants Have Already Provided LPL With Voluminous Discovery Relating to Both Its Accused and Non-Accused Products.

LPL served its initial discovery requests in the Delaware Action over two years ago. In response to those discovery requests, the Tatung Defendants produced technical specifications and assembly drawings covering approximately 800 models of monitors and flat panel displays they sell.

The Tatung Defendants have expended a great deal of effort to comply with their discovery obligations. Since late January 2007 alone, the Tatung Defendants have produced approximately 15,000 pages of highly confidential documents. In addition, Defendants have made available for LPL's inspection, and LPL has examined, disassembled, and photographed more than 40 monitor and television products. Of the hundreds of products for which LPL has been provided technical documents, LPL to date has accused only 20 products of infringing the patents-in-suit.

C. LPL's Motion To Compel Further Customer Information Is Pending Before the Special Master.

In January 2007, LPL filed a motion to compel the production of additional

documents such as highly confidential agreements and communications between the Tatung Defendants and their customers relating to ***all*** of the Tatung Defendants' visual display products including the hundreds of unaccused products. The Tatung Defendants vigorously opposed that motion on the grounds that LPL's requested discovery is not limited in any way to the accused products at issue in the Delaware Action and is instead a transparent attempt by LPL to obtain highly sensitive business information. That motion is presently pending before the Special Master. The parties expect a decision shortly, as discovery cut-off is March 30, 2007.

D. LPL Now Seeks the Same Discovery Directly From the Tatung Defendants' Customers.

In what can only be characterized as a blatant attempt to circumvent a potentially unfavorable ruling by the Special Master on a motion LPL itself filed, LPL recently served Ingram, as well as two dozen other customers of the Tatung Defendants, with a subpoena and deposition notice seeking voluminous discovery about highly confidential customer information on hundreds of products that LPL has *never accused of infringement*.

LPL's extensive and broad-reaching requests for "visual display products" encompass *all* of the products the Tatung Defendants sell to Ingram and not just the accused products that are the subject of the Delaware Action. To date, LPL has failed to provide any legitimate explanation why information on *unaccused* products is relevant to its patent infringement claims in the Delaware Action.

III. LEGAL ARGUMENT

A. The Tatung Defendants Have Standing Under FRCP 26(c) To Move For A Protective Order.

Rule 26(c) of the Federal Rules of Civil Procedure ("FRCP") provides that "[u]pon motion *by a party* or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred...and for good cause shown... the court in the district where the deposition is to be taken may

make any order which justice requires to protect a party or person..." (emphasis added). Courts within the Ninth Circuit have recognized that this language gives parties to a lawsuit, as well as third-parties themselves, standing to challenge third-party subpoenas. *See Portland Gen. Elec. Co. v. U.S. Bank Trust Nat'l Assoc.*, 38 F. Supp. 2d 1202, 1206 n. 3 (D. Or. 1999), *rev'd on other grounds*, 218 F.3d 1085 (9th Cir. 2000) (noting that FRCP 26(c) "expressly gives" a party standing to challenge third party subpoenas); *see also, In re Ashworth, Inc. Securities Litigation*, 2002 WL 33009225 at * 1 (S.D. Cal. 2002) (finding that under FRCP 26, defendants have standing to seek a protective order in connection with a third party subpoena); *Springbook Lenders v. Northwestern Nat'l Ins. Co.*, 121 F.R.D. 679, 680 (N.D. Cal. 1988) (citing FRCP 26(c) for the proposition that "[Defendant] does have standing to object to [Plaintiff's] subpoena of a third party").

In meet and confer discussions, LPL has asserted that the Tatung Defendants do not have standing to object to the information sought from third parties. LPL is mistaken and references inapposite authority.[1]

B. Good Cause Supports The Issuance of A Protective Order.

1. Legal Standard Governing The Issuance Of Protective Orders.

Pursuant to Federal Rule of Civil Procedure 26(c), "upon a showing of good cause," the Court may issue a protective order precluding or limiting the scope of discovery in order to protect a party from annoyance, embarrassment, oppression, or

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[1] For example, LPL will likely cite *Dart Industries, Inc. v. Liquid Nitrogen Processing* for the proposition that "unless a party to an action can make claim to some personal right or privilege in respect to the subject matter of a subpoena duces tecum directed to a nonparty witness, the party to the action has no right to relief under FRCP 45(b) or 30(b)." 50 F.R.D. 286, 291 (D. Del. 1970).

Dart Industries is inapposite for two reasons. First, that case involved a party's motion to *quash a third party subpoena under FRCP 45(b)*; here, the Tatung Defendants move for a *protective order pursuant to FRCP 26(c)*, which expressly grants parties standing to move the court to limit the scope of, or altogether preclude certain issues from, third party discovery.[1] FRCP 26(c)(4), 26(c)(7).

Second, unlike the Tatung Defendants, the moving party in *Dart Industries* did not assert any personal privilege with respect to the requested documents. 50 F.R.D. at 291. In fact, the court expressly "decline[d] to hold that Dart lacks standing to move to quash the subpoena duces tecum on the grounds stated in FRCP 45(b)," averring that Dart's interest "*may be sufficient* to give it standing to move to limit the production sought here." *Id.*, emphasis added.

undue burden or expense. *See, e.g., Murata Mfg. Co., Ltd. v. Bel Fuse, Inc.*, 234 F.R.D. 175, 178 (N.D. Ill. 2006); *see also, Pulsecard, Inc. v. Discover Card Services, Inc.*, 1995 WL 526533 at *14 (D. Kan. 1995).

In the context of Federal Rule of Civil Procedure 26(c)(7) specifically, "good cause" requires the party seeking the protective order to demonstrate that: (1) the material sought to be protected is confidential, and (2) disclosure will create a competitive advantage for the party. *Pulsecard*, 1995 WL 526533 at * 16, *citing Georgia Television Co. v. TV News Clips of Atltanta*, 718 F. Supp. 939, 953 (N.D. Ga. 1989).

2. The Requested Discovery Seeks Overly Broad Categories Of Communications and Information Completely Unrelated To Claims At Issue in The Delaware Action.

A protective order is appropriate because LPL's third-party discovery requests are overly broad and seek information that is not relevant to its claims, nor the Tatung Defendants' defenses, in the Delaware Action. Instead, LPL seeks to obtain, through the guise of "discovery," sensitive and confidential information relating to the Tatung Defendant's business operations that would help LPL gain a competitive advantage.

"[D]iscovery may not be had regarding a matter which is not 'relevant to the subject matter involved in the pending action.'" *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990). The case of *Joy Technologies, Inc. v. Flakt, Inc.*, 772 F. Supp. 842 (D. Del. 1991) presents a nearly identical situation to that found here. In *Joy Technologies*, the defendant sought a protective order preventing plaintiff from seeking discovery from *any of the defendant's customers or potential customers* until plaintiff made a showing that the information: (a) was necessary and relevant to the action, and (b) could not be obtained from any other source. *Id.* at 845. The court granted the requested protective order, stating:

> "[I]t is undisputed that [plaintiff] and [defendant] are fierce competitors in the technology that is the subject of this lawsuit, and [plaintiff] has not

> convinced the Court that the same information it seeks from third parties is not available from [defendant]. Therefore, unless [plaintiff] can demonstrate that it has a specific need for evidence available only from third party customers of [defendant], the Court concludes that [defendant] and its customers are entitled to protection."

Id. at 849.[2]

Here, LPL's discovery requests to Ingram seek broad categories of documents and information concerning both accused and *unaccused* products that also are not limited as to time period. Such overly broad discovery requests encompass documents and information that, in reality, have nothing to do with the pending Delaware Action. Instead, it is readily apparent that LPL seeks to obtain such information about the Tatung Defendants to obtain a competitive advantage over them.

3. The Requested Discovery Seeks Confidential Business Information To Which LPL Would Not Otherwise Be Entitled.

A protective order also is appropriate because LPL's subpoena and deposition notice seeks disclosure of confidential, proprietary trade secret information belonging to the Tatung Defendants. Such confidential commercial information warrants special protection under Rule 26(c)(7). *Micro Motion,* 894 F.2d at 1323, *citing Smith & Wesson v. United States*, 782 F.2d 1074, 1082 (1st Cir. 1986).

The Tatung Defendants and LPL are active competitors in the computer monitor business. Declaration of Jackson Chang ("Chang Decl.") at ¶ 2. Producing the information and testimony LPL seeks would cause major competitive harm to the Tatung Defendants. Chang Decl. at ¶ 3. The deposition topics designated by LPL are closely guarded by the Tatung Defendants as highly sensitive and confidential business

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[2] Similarly, in *Micro Motion, supra*, the plaintiff sought to obtain information from a nonparty competitor that was purportedly relevant to the issue of damages in the underlying patent suit. The court held that the plaintiff was embarking on a "fishing expedition" with its "merely speculative inquiries in the guise of relevant discovery." 894 F.2d at 1327-28, *see also Visto Corp. v. Smartner Info. Systems, Ltd.*, 2007 WL 218771 at * 5 (N.D. Cal. 2007) (granting protective order such that third party did not have to respond to the subpoena).

information.[3] *Id.* at ¶ 4. The Tatung Defendants' methods of manufacturing its visual display products, for example, are not disclosed publicly; divulging this information would likely result in competitors using the information to 1) undercut the Tatung Defendants in pricing; 2) deduce the exact specifications required by existing customers; and/or 3) specifically target and lure away Tatung's existing customers. *Id.* at ¶ 7. All of this information is kept secret by the Tatung Defendants. Only authorized personnel have access to the information and information kept on computers are password protected. *Id.* at ¶ 6. The product specifications and features required by each customer constitute competitive value and maintaining the confidentiality of such information is essential to the fair conduct of this litigation.

4. LPL's Discovery Is Unduly Burdensome And Is Intended to Harass The Tatung Defendants' Customers.

Ordering compliance with LPL's subpoena would pose an undue and unnecessary burden and expense on non-party Ingram, particularly given the utter irrelevance of the majority of requested documents and testimony. The Tatung Defendants respectfully submit that LPL's discovery requests have been interposed solely to harass Ingram and aggravate the business relationship between the Tatung Defendants and their customers.

C. The Need For a Protective Order Limiting Third Party Discovery Is Even More Compelling Due To LPL's Violations Of Previous Protective Orders.

LPL will likely argue that a Protective Order entered in the Delaware Action is sufficient for discovery produced by third parties. The Tatung Defendants disagree on two grounds, both of which are pending before the Special Master.

First, the Tatung Defendants have recently petitioned the Special Master for relief regarding LPL's multiple violations of protective orders issued in different cases,

[3] As just one example, LPL designates as a deposition topic: "The nature of the business relationship and transactions between Ingram Systems and [the Tatung Defendants] relating to the sale, manufacture, assembly, distribution, or import of visual display products, including but not limited to the agreements between Ingram [and the Tatung Defendants]."

implicating different patents, pending between the parties.[4] Second, the PTO records appear to show that LPL staffs its litigation team with attorneys who also prosecute patents in the area of flat panel display technology. The Tatung Defendants have also raised this issue with the Special Master.

For these reasons, the Tatung Defendants submit that the parties' current Protective Order is insufficient to protect against the potential harm posed by disclosure of unlimited confidential information by third parties, including Ingram. *See Pulsecard*, 1995 WL 526533 at * 26 ("The court does not find that the entry of a prior protective order should necessarily bar a second one, if facts justify it").

IV. CONCLUSION

To be clear, the Tatung Defendants do not contest LPL's right to seek discovery from Ingram. They submit, however, that discovery obtained from third-parties must be *relevant* to this litigation and serve a legitimate purpose. Here, LPL's overly broad and improper requests do not serve such purposes. Accordingly, the Tatung Defendants respectfully request that the Court issue a protective order limiting any discovery from Ingram to deposition testimony and documents relating to the accused products.

DATED: March 9, 2007

GREENBERG TRAURIG, LLP

By: _____
FRANK E. MERIDETH
MARK KRIETZMAN
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CHARLENE L. OH

Attorneys for Defendants
TATUNG COMPANY AND TATUNG COMPANY OF AMERICA, INC.

[4] The cases include *LPL v. Tatung Company, et. al.*, Case No. 05-292-JJF in Delaware District Court and *LPL v. Tatung Company, et. al.*, Case No. CV-02-6775-CBM in the Central District of California.

EXHIBIT G

ORAL ARGUMENT REQUESTED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

L.G. PHILIPS LCD CO., LTD, Plaintiff, v. TATUNG COMPANY, TATUNG COMPANY OF AMERICA, INC., and VIEWSONIC CORPORPORATION, Defendants.	NO. DEFENDANTS TATUNG COMPANY AND TATUNG COMPANY OF AMERICA, INC.'S MOTION FOR A PROTECTIVE ORDER LIMITING SCOPE OF THIRD PARTY DEPOSITION AND SUBPOENA AND REQUEST FOR EXPEDITED HEARING **NOTED FOR HEARING: March 19, 2007, 9:00 a.m.**

FRCP 26(C) CERTIFICATE OF COMPLIANCE

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, counsel for Defendants Tatung Company and Tatung Company of America, Inc. certify that they conferred in good faith with counsel for plaintiff L.G. Philips LCD Co., Ltd. to resolve this dispute prior to filing this motion and were unsuccessful.

BASIS FOR EMERGENCY HEARING

This Motion for Protective Order Limiting Scope of Third Party Deposition and Subpoena (the "Motion for Protective Order") concerns a deposition notice and third-party

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subpoena issued in this district in connection with a patent infringement lawsuit pending in the United States District Court for the District of Delaware (the "Delaware Action").

Defendants respectfully request an expedited hearing and briefing schedule on the Motion for Protective Order for the following reasons:

- Discovery cut-off in the Delaware Action is set for March 30, 2007.
- Fully aware of the impending discovery cut-off date, Plaintiff waited until the last minute to serve 23 separate third-party subpoenas and deposition notices, issued out of 15 different judicial districts, throughout the country starting in mid-February 2007.
- On February 27, 2007, Defendants requested that Plaintiff meet and confer about the scope of discovery demanded by Plaintiff in those 23 third-party subpoenas and deposition notices. Following Defendants' February 27, 2007 request, Plaintiff agreed to meet and confer on March 5, 2007.
- During the March 5, 2007 meet and confer, Plaintiff refused to limit the scope of the third-party subpoenas and deposition notices in any meaningful way.
- Plaintiff's subpoenas demand production of documents by March 5, 2007, and its deposition notices set depositions for March 12, 2007 through March 28, 2007. Because of Plaintiff's last-minute discovery tactics and its failure to meaningfully meet and confer with Defendants, an emergency hearing is necessary to resolve these discovery issues in a timely manner. Pursuant thereto, Defendants respectfully request an emergency hearing.

I. INTRODUCTION

Defendants Tatung Company and Tatung Company of America (collectively, "the Tatung Defendants") submit this Memorandum of Points and Authorities in support of their Motion for Protective Order Limiting Scope of Third Party Deposition and Subpoena (the "Motion for Protective Order"). The Motion for Protective Order seeks to limit the scope

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of a subpoena and deposition notice served on third-party Amazon.com, Inc. ("Amazon.com").

This Motion for Protective Order concerns a deposition notice and third-party subpoena issued in this district in connection with a patent infringement lawsuit pending in the United States District Court for the District of Delaware (the "Delaware Action," C.A. No. 04-343-JJF). For the reasons discussed in greater detail below, the Tatung Defendants' request for a protective order should be granted because the discovery sought by Plaintiff L.G. Philips LCD Co., Ltd. ("LPL") is:

1. A transparent and improper effort by LPL to perform an "end run" around a potentially unfavorable ruling by the Special Master in the Delaware Action concerning the proper scope of LPL's discovery, namely, the Special Master's impending ruling on LPL's motion to compel discovery pertaining to *unaccused* products from the Tatung Defendants and the Tatung Defendants' motion to stay discovery regarding *unaccused* products pending resolution of issues relating to LPL's and its attorneys' violations of Protective Orders in cases pending between the parties;

2. Irrelevant in that it seeks extremely broad categories of communications and information from the Tatung Defendants' customers entirely unrelated to the patents-in-suit or the accused products in the Delaware Action;

3. Not reasonably calculated to lead to the discovery of admissible evidence in the Delaware Action, but instead, is information about the Tatung Defendants' confidential business communications and trade secret information that LPL seeks for ulterior and improper purposes; and

4. Unduly burdensome in that the third-party discovery Plaintiff seeks from Amazon.com and the Tatung Defendants' other customers will require the production of thousands of documents and is calculated to harass the Tatung Defendants' customers,

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some of whom have already responded to subpoenas issued by LPL during jurisdictional discovery.

II. STATEMENT OF FACTS

A. The Nature Of This Lawsuit.

Defendant Tatung sells electronic products including computer monitors and televisions to resellers and retailers worldwide. Defendant Tatung Company of America, a California corporation, is a reseller of computer monitors and other LCD applications in the United States. The Tatung Defendants also perform OEM (Original Equipment Manufacturer) services for a number of customers. LPL and its parent company, LG Electronics, Inc. ("LGE"), compete with the Tatung Defendants in the market of flat display panel products (e.g., LCD monitors, LCD televisions and plasma televisions).

Third-party Amazon.com, the recipient of LPL's subpoena and deposition notice, is located in Seattle, Washington and is a customer of the Tatung Defendants.

The Tatung Defendants integrate more than 800 models of computer monitors and flat panel display products, referred to collectively as "visual display products." As OEMs, many of the Tatung Defendants' products are branded and otherwise customer specific; in most instances, the products are made to exacting customer specifications. Because the monitor business is highly competitive, the particular product design requirements and specifications of the Tatung Defendants' OEM customers, including those of Amazon.com, are extremely valuable trade secrets. The Tatung Defendants' specific pricing arrangements with customers also are extremely valuable trade secrets.

LPL commenced the Delaware Action against the Tatung Defendants on May 27, 2004. In the Delaware Action, LPL has alleged patent infringement claims against the Tatung Defendants based on certain "rear-mount" patents with respect to 20 of its products.

The discovery cut-off date in the Delaware Action is March 30, 2007.

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B. The Tatung Defendants Have Already Provided LPL With Voluminous Discovery Relating to Both Its Accused and Non-Accused Products.

LPL served its initial discovery requests in the Delaware Action over two years ago. In response to those discovery requests, the Tatung Defendants produced technical specifications and assembly drawings covering approximately 800 models of monitors and flat panel displays they sell. Until November 2006, LPL had accused only one Tatung product of infringing the patents-in-suit. In November 2006, LPL identified two additional accused products. It was not until mid-January 2007 that LPL accused the remaining products.

The Tatung Defendants have expended a great deal of effort to comply with their discovery obligations. Since late January 2007 alone, the Tatung Defendants have produced approximately 15,000 pages of highly confidential documents, including product work instructions, exploded view drawings of products, and sales summaries from 2002 to the present (quarter 1, 2007) containing model, price, and quantity information for *all* of its visual display products; and

In addition, the Tatung Defendants have made available for LPL's inspection, and LPL has examined, disassembled, and photographed more than 40 monitor and television products. Of the hundreds of products for which LPL has been provided technical documents, LPL to date has accused only 20 products of infringing the patents-in-suit.

C. LPL's Motion To Compel Further Customer Information Is Pending Before the Special Master.

In January 2007, LPL filed a motion to compel the production of additional documents such as highly confidential agreements and communications between the Tatung Defendants and their customers relating to ***all*** of the Tatung Defendants' visual display products including the hundreds of unaccused products. The Tatung Defendants vigorously opposed that motion on the grounds that LPL's requested discovery is not limited in any way to the accused products at issue in the Delaware Action and is instead a transparent

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attempt by LPL to obtain highly sensitive business information. That motion is presently pending before the Special Master. The parties expect a decision shortly, as discovery cut-off is March 30, 2007.

D. LPL Now Seeks the Same Discovery Directly From the Tatung Defendants' Customers.

In what can only be characterized as a blatant attempt to circumvent a potentially unfavorable ruling by the Special Master on a motion LPL itself filed, LPL recently served Amazon.com, as well as two dozen other customers of the Tatung Defendants, with a subpoena and deposition notice seeking voluminous discovery about highly confidential customer information on hundreds of products that LPL has *never accused of infringement*. *See* Exhibit 1.

LPL's extensive and broad-reaching requests for discovery regarding "visual display products" encompass *all* of the products the Tatung Defendants sell to Amazon.com and not just the accused products that are the subject of the Delaware Action. To date, LPL has failed to provide any legitimate explanation why information on *unaccused* products is relevant to its patent infringement claims in the Delaware Action.

III. LEGAL ARGUMENT

A. The Tatung Defendants Have Standing Under FRCP 26(c) To Move For A Protective Order.

Rule 26(c) of the Federal Rules of Civil Procedure ("FRCP") provides that "[u]pon motion *by a party* or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred...and for good cause shown... the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person..." (emphasis added). Ninth Circuit courts have recognized that this language gives parties to a lawsuit, as well as third-parties themselves, standing to challenge third-party subpoenas. *See Portland Gen. Elec. Co. v. U.S. Bank Trust Nat'l Assoc.*, 38 F. Supp. 2d 1202, 1206 n. 3 (D. Or. 1999), *rev'd on other grounds*,

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218 F.3d 1085 (9th Cir. 2000) (noting that FRCP 26(c) "expressly gives" a party standing to challenge third party subpoenas); *see also, In re Ashworth, Inc. Securities Litigation*, 2002 WL 33009225 at * 1 (S.D. Cal. 2002) (finding that under FRCP 26, defendants have standing to seek a protective order in connection with a third party subpoena); *Springbook Lenders v. Northwestern Nat'l Ins. Co.*, 121 F.R.D. 679, 680 (N.D. Cal. 1988) (citing FRCP 26(c) for the proposition that "[Defendant] does have standing to object to [Plaintiff's] subpoena of a third party").

In meet and confer discussions, LPL has asserted that the Tatung Defendants do not have standing to object to the information sought from third parties. LPL is mistaken and references inapposite authority.[1]

Based on the above, the Tatung Defendants, as parties to the Delaware Action, clearly have standing to seek a protective order against LPL's attempts to obtain extremely broad and irrelevant discovery from third-parties.

The Tatung Defendants do claim that the topics and documents requested impinge on their trade secrets and other confidential proprietary information.

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[1] For example, LPL will likely cite *Dart Industries, Inc. v. Liquid Nitrogen Processing* for the proposition that "unless a party to an action can make claim to some personal right or privilege in respect to the subject matter of a subpoena duces tecum directed to a nonparty witness, the party to the action has no right to relief under FRCP 45(b) or 30(b)." 50 F.R.D. 286, 291 (D. Del. 1970), *quoting Shepherd v. Castle*, 20 F.R.D. 184, 188 (W.D.Mo. 1957).

Dart Industries is inapposite for two reasons. First, that case involved a party's motion to *quash a third party subpoena under FRCP 45(b)*; here, the Tatung Defendants move for a *protective order pursuant to FRCP 26(c)*, which expressly grants parties standing to move the court to limit the scope of, or altogether preclude certain issues from, third party discovery.[1] FRCP 26(c)(4), 26(c)(7). The Tatung Defendants have chosen not to quash under FRCP 45(b) because they agree that LPL may seek *relevant and appropriate* discovery from third parties; FRCP 26(c) is the more appropriate mechanism to strike a balance between allowing open discovery and ensuring that such discovery is fairly tailored to the accused products.

Second, unlike the Tatung Defendants, the moving party in *Dart Industries* did not assert any personal privilege with respect to the requested documents. 50 F.R.D. at 291. In fact, the court expressly "decline[d] to hold that Dart lacks standing to move to quash the subpoena duces tecum on the grounds stated in FRCP 45(b)," averring that Dart's interest "*may be sufficient* to give it standing to move to limit the production sought here." *Id.*, emphasis added.

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B. Good Cause Supports The Issuance of A Protective Order.

1. Legal Standard Governing The Issuance Of Protective Orders.

Pursuant to Federal Rule of Civil Procedure 26(c), "upon a showing of good cause," the Court may issue a protective order precluding or limiting the scope of discovery in order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. *See, e.g., Murata Mfg. Co., Ltd. v. Bel Fuse, Inc.*, 234 F.R.D. 175, 178 (N.D. Ill. 2006); *see also, Pulsecard, Inc. v. Discover Card Services, Inc.*, 1995 WL 526533 at *14 (D. Kan. 1995). The protective order may include limiting the scope of discovery to certain matters, precluding altogether the discovery of certain matters, and ordering that a trade secret or other confidential research, development, or commercial information not be revealed. Fed R. Civ Proc. 26(c)(4), 26(c)(7).

In the context of Federal Rule of Civil Procedure 26(c)(7) specifically, "good cause" requires the party seeking the protective order to demonstrate that: (1) the material sought to be protected is confidential, and (2) disclosure will create a competitive advantage for the party. *Pulsecard*, 1995 WL 526533 at * 16, *citing Georgia Television Co. v. TV News Clips of Atltanta*, 718 F. Supp. 939, 953 (N.D. Ga. 1989).

2. The Requested Discovery Seeks Overly Broad Categories Of Communications and Information Completely Unrelated To Claims At Issue in The Delaware Action.

A protective order is appropriate because LPL's third-party discovery requests are overly broad and seek information that is not relevant to its claims, nor the Tatung Defendants' defenses, in the Delaware Action. Instead, LPL seeks to obtain, through the guise of "discovery," sensitive and confidential information relating to the Tatung Defendant's business operations that would help LPL gain a competitive advantage.

"[D]iscovery may not be had regarding a matter which is not 'relevant to the subject matter involved in the pending action.'" *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990). Moreover, "[e]*ven if relevant*, discovery is not permitted

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where no need is shown, or compliance would be unduly burdensome, or where harm to the person outweighs the need of the person seeking discovery of the information." *Id; see also, American Standard, Inc. v. Pfizer Inc.*, 828 F.2d 734, 739-42 (Fed. Cir. 1987).

In this regard, the case of *Joy Technologies, Inc. v. Flakt, Inc.*, 772 F. Supp. 842 (D. Del. 1991) is instructive, and presents a nearly identical situation to that found here. In *Joy Technologies*, the defendant sought a protective order preventing plaintiff from seeking discovery from *any of the defendant's customers or potential customers* until plaintiff made a showing that the information: (a) was necessary and relevant to the action, and (b) could not be obtained from any other source. *Id.* at 845. The court granted the requested protective order, stating:

> "[I]t is undisputed that [plaintiff] and [defendant] are fierce competitors in the technology that is the subject of this lawsuit, and [plaintiff] has not convinced the Court that the same information it seeks from third parties is not available from [defendant]. Therefore, unless [plaintiff] can demonstrate that it has a specific need for evidence available only from third party customers of [defendant], the Court concludes that [defendant] and its customers are entitled to protection."

Id. at 849.

Similarly, in *Micro Motion, supra*, the plaintiff sought to obtain information from a nonparty competitor that was purportedly relevant to the issue of damages in the underlying patent suit. The court held that the plaintiff was embarking on a "fishing expedition" with its "merely speculative inquiries in the guise of relevant discovery." 894 F.2d at 1327-28, *see also Visto Corp. v. Smartner Info. Systems, Ltd.*, 2007 WL 218771 at * 5 (N.D. Cal. 2007) (granting protective order such that third party did not have to respond to the subpoena).

Here, LPL's discovery requests to Amazon.com seek broad categories of documents and information concerning both accused and *unaccused* products that also are not limited as to time period. Such overly broad discovery requests encompass documents and information that, in reality, have nothing to do with the pending Delaware Action. Instead,

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it is readily apparent that LPL seeks to obtain such information about the Tatung Defendants to obtain a competitive advantage over them.

It also should be noted that the Tatung Defendants do not seek to prevent LPL from obtaining all third-party discovery being requested in its subpoena and deposition notice. Rather, such third-party discovery should focus on deposition topics and documents *pertaining to the accused products* at issue in the Delaware Action.

3. The Requested Discovery Seeks Confidential Business Information To Which LPL Would Not Otherwise Be Entitled.

A protective order also is appropriate because LPL's subpoena and deposition notice seeks disclosure of confidential, proprietary trade secret information belonging to the Tatung Defendants. Such confidential commercial information warrants special protection under Rule 26(c)(7). *Micro Motion*, 894 F.2d at 1323, *citing Smith & Wesson v. United States*, 782 F.2d 1074, 1082 (1st Cir. 1986).

The Tatung Defendants and LPL are active competitors in the computer monitor business. Declaration of Jackson Chang ("Chang Decl.") at ¶ 2. Producing the information and testimony LPL seeks would cause major competitive harm to the Tatung Defendants. Chang Decl. at ¶ 3. As just one example, LPL designates as a deposition topic: "The scope, nature, and purpose of communications between Amazon.com and [the Tatung Defendants] (a) concerning the sale or marketing... of 'visual display products' manufactured or assembled in whole or in part by or for [the Tatung Defendants]... and (c) communications regarding the market trends for 'visual display products' in the United States." Another deposition topic concerns purchase "agreements or contracts," "directly or indirectly" between Amazon.com.com and the Tatung Defendants. These topics are closely guarded by the Tatung Defendants as highly sensitive and confidential business information. *Id.* at ¶ 4. The Tatung Defendants' information regarding market trends for its visual display products, for example, is not disclosed publicly; divulging this information would likely result in competitors using the information to 1) undercut the Tatung

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Defendants in pricing; 2) deduce the exact specifications required by existing customers; and/or 3) specifically target and lure away Tatung's existing customers. *Id.* at ¶ 7. All of this information is kept secret by the Tatung Defendants. Only authorized personnel have access to the information and information kept on computers are password protected. *Id.* at ¶ 6. The product specifications and features required or purchased by each customer, including Amazon.com, constitute competitive value and maintaining the confidentiality of such information is essential to the fair conduct of this litigation.

4. LPL's Discovery Is Unduly Burdensome And Is Intended to Harass The Tatung Defendants' Customers.

Ordering compliance with LPL's subpoena would pose an undue and unnecessary burden and expense on non-party Amazon.com to gather and produce such information and defend depositions in the requested time frame, particularly given the utter irrelevance of the majority of requested documents and testimony.

The Tatung Defendants respectfully submit that LPL's discovery requests have been interposed solely to harass Amazon.com and aggravate the business relationship between the Tatung Defendants and their customers.

IV. CONCLUSION

To be clear, the Tatung Defendants do not contest LPL's right to seek discovery from Amazon.com. They submit, however, that discovery obtained from third-parties must be *relevant* to this litigation and serve a legitimate purpose. Here, LPL's overly broad and improper requests do not serve such purposes. Accordingly, the Tatung Defendants

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respectfully request that the Court issue a protective order limiting discovery from Amazon.com to deposition testimony and documents relating to the accused products.

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